

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6489 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : YES
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

LASIBEN AMTAJI

Versus

OIL & NATURAL GAS COMMISSION

Appearance:

MR AK CLERK for Petitioner

NOTICE SERVED for Respondent No. 1

MR RAJNI H MEHTA for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/10/1999

ORAL JUDGEMENT

Learned advocate Shri A.K.Clerk is appearing for the petitioner-workman. Learned advocate Shri R.H.Mehta is appearing for the respondent-Oil and Natural Gas Commission ("the Commission" for short). The facts of the present case, in short, are that the petitioner

joined the services of the respondent corporation on 1.6.1969 as a contingent employee and on completion of the 11 years' period of service, the petitioner's services were regularized on the post of Khalasi with effect from 6.8.1980. According to the case of the petitioner, in the seniority list of contingent/work charged unskilled employees having completed 240 days of service, the name of the petitioner appears at sr.no. 240; that there are other persons working in similar posts in the respondent Commission as the petitioner namely Sarasvashri Chhotaji Varsanji, Popatji Madhurji and Mangaji Ataji who are junior to the petitioner and who are at sr.no. 241 to 243 in the said seniority list are said to have joined the service as contingent employees on 1.6.69 whereas they were regularized on 3.12.1977, 3.1.1975 and 3.1.1975 respectively. According to the petitioner, though the petitioner was senior to the said three persons on the basis of engagement as contingent employee and is shown to be senior in the seniority list, the action of the respondent authorities in regularizing her only on 6.8.1980 is clearly arbitrary, capricious, discriminatory, in breach of the ONGC Terms of Conditions of Appointment and Service Regulation, 1975, illegal and null and void. According to the petitioner, Circular No. 17(II)/80-Reg/EP dated 11.3.1980 provides that in case of contingent employees, the inter se seniority of the candidates, brought on the regular establishment on the same date will be decided on the basis of the date of their continuous employment on contingent basis prior to such regularization. The petitioner submits that on the basis of continuous engagement as contingent employee, she has been shown to be senior to the persons placed at sr. no. 241 to 243 and, therefore, it is evident that she ought to have been regularized prior to or at least from the date from which her juniors were regularized i.e. 3.1.1975. The petitioner, therefore, wrote a letter to the Dy. General Manager, ONGC, Ahmedabad on 29.8.80 seeking to review her case and the Administrative Officer (P. & A.) addressed a letter to the Dy. General Manager, Ahmedabad Project on 31.3.1989 that as per the office memorandum dated 28.3.88, persons who have joined subsequent to 1.1.1979 in class IV are superannuated after attaining the age of 58 years. The Dy. General Manager, Ahmedabad Project sent a memorandum to the petitioner dated 6.4.1989 informing her that she is due for retirement on 30.9.89 after noon on attaining the age of 58 years. Thereafter, the petitioner wrote a letter to the Regional Director, ONGC, Baroda stating that the office memorandum annexure "C" is not applicable to her and that she should be retired only on her reaching the age of sixty years.

Inspite of the said letter, the petitioner was served with an office order dated 1.9.1989 stating inter alia that on her attaining the age of 58 years, she will be superannuated from service of the COMmission with effect from 30.9.1989 after noon and accordingly, her name would be deleted from the muster rolls. Thus, in short, the petitioner claimed the benefit of retirement at the age of sixty years instead of superannuation on her reaching the age of 58 years. The petitioner is relying on Regulation 25(2) of the said ONGC Terms and Conditions of Appointment in Service Regulation, 1975 which is reproduced hereinbelow as under:

"25 (2) The employees belonging to the following categories of posts shall be retained in service till the afternoon of the last day of the month in which they attain the age of sixty years;

- i) Attendant.
- ii) Guard.
- iii) Khalasi.
- iv) Sanitary Cleaner.
- v) Mali.
- vi) Cleaner.
- vii) Guest House Attendant.
- viii) Helper.
- ix) Deck Hand Attendant/Tendol.
- x) Jamadar
- xi) Daftry.
- xii) Head Mali.
- xiii) Head Sanitary Cleaner.
- xiv) Hospital Attendant.

Provided that nothing in this sub regulation shall apply to an employee who is appointed to any of these posts on or after the 1st day of January, 1979."

According to the case of the petitioner, she is entitled to have the age of superannuation as sixty years because she was appointed on 1.6.69 and, therefore, the petitioner has submitted that even assuming while denying that the petitioner is to superannuate at the age of 58 years, the respondent Commission ought to have exercised the power to extend her service for a period of two years according to the executive instructions in the matter of retirement. During the pendency of the petition, the petition was amended by the petitioner and according to the amendment granted by this court, the action of the respondents in striking off the name of the petitioner from the muster rolls of the Commission is violative of section 25G of the Industrial Disputes Act, 1947 ("the ID Act" for short) in as much as the persons junior to the petitioner are retained in service whereas the services of the petitioner is being sought to be terminated. It has been further contended that the word "appointed" used in Regulation 25(2) of the said Regulations ought to have been interpreted to include the appointment on contingent basis and it does not specify that it only mean appointment on regular basis. The petitioner was appointed as contingent employee on 1.6.69 and was working as such for 11 years and that her service as contingent employee ought to have been taken into consideration and that she ought to have been treated as appointed in the services of the commission on 1.6.69 and, therefore, she cannot be said to be appointed after 1.1.1979. The action of the respondent authorities in treating her as appointed on 6.8.1980 is, therefore, absolutely illegal, null and void. The petitioner ought to have been treated to have been appointed in service of the commission from 1.6.1969 and the regulation 25(2) would not be applicable to the petitioner. The action of the respondent authorities is, therefore, absolutely illegal, null and void. In view of the said amendment, the prayer was amended by prayer clause 15(aa) that the respondent authorities be directed to treat the petitioner as regularized in service of the commission on and with effect from 3.1.1975 and further direct the respondent authorities to grant all consequential benefits like salary, seniority etc. on that basis.

The petition has been contested by the respondent Commission by filing affidavit in reply filed by one M.P.Parmar, Administrative Officer working in the P. & A. Department, ONGC, Ahmedabad Project, Ahmedabad. Mainly, it has been contended that there was delay in filing the petition challenging the action of the

respondent and on merits, it was pointed out that the selection committee met in 1974 to consider and regularize more than 100 contingent workers who have completed 240 days of service. It is further contended by the deponent in the affidavit in reply that the criteria of the selection committee was that the workers must be of good physique and aged thirty years. For regularizing the services of the persons at serial no. 242, 243 and 244, it has been contended that since they were falling within the age limit of thirty years, their service was regularized. It has been also contended that the employee at sr.no. 241 was not regularized at that time as he was over aged by eight months. It is also contended that in the year 1977, service of the person at Sr.. no. 241 was regularized and the petitioner and others' services were not regularized since they were very much over aged. It is further contended that the petitioner and others as named in paragraph 2 of the affidavit in reply were regularized in 1980 by giving age relaxation. It is also denied that Regulation 25(2) as amended is discriminatory and violative of Articles 14 and 16 of the Constitution. Additional affidavit in reply was also filed by the said deponent on behalf of the Commission on 21st April, 1990 and pointed out the same factual data against the petition and main contention is about the age limit of thirty years for regularization of service and the petitioner was beyond the age of thirty years and, therefore, her case was not considered in the year 1975 but the same was considered in the year 1980 according to the office memorandum dated 29th July, 1967 for regularization of contingent hands which was produced on record by annexure-II page 47 by the respondent Commission. The respondent has also denied the interpretation as sought to be made by the petitioner in regulation 25(2) that the word "appointed" cannot be considered to be the appointment on contingent basis as alleged by the petitioner.

The petition was admitted by this Court on 29th September, 1989 and while admitting the said petition, following order was passed by this Court :

"Rule.

So far as interim relief is concerned, it is not possible to agree with the learned advocate for the petitioner that the petitioner should be permitted to serve upto 60 years. She is being superannuated at the age of 58 years. Her contention is that her juniors were confirmed in

1977 and she was not confirmed and that is the reason why her age of superannuation is fixed at 58 years while her juniors who were confirmed earlier in 1977 were permitted to work upto 60 years. Even assuming that her contention has prima facie substance, it will have to be examined on merits. Confirmation of her juniors has taken place earlier in 1977 and the petition is filed in 1989 after 12 years.

Mr. Clerk contended that the petitioner is illiterate lady and she never knew that her juniors were confirmed. Be that as it may, balance of convenience is not in favour of the petitioner for granting her interim relief. If she ultimately succeeds, she is bound to get all benefits as if she had worked upto 60 years.

Mr. Mehta for the respondent Commission has submitted that at the final hearing stage, once such direction is granted, the Commission is bound to restore all benefits to the petitioner as directed by the court ultimately while in case the petition fails and if interim injunction is granted to the petitioner, it would be impossible to put the clock back and the monies which might have been taken by the petitioner cannot be taken back from her. We find lot of substance in this contention of Mr. Mehta for the respondents. It is obvious that if interim relief is granted permitting the petitioner to work upto 60 years pending the petition even if ultimately the petition succeeds, it will be meaningless and would have to be treated as having failed. While in case the petition fails, all legally permissible monetary benefits can be made available to the petitioner. Consequently, no case is made out for grant of interim relief to the petitioner during the pendency of this petition. Interim relief is, therefore, refused.

It is clarified that merely because rule is issued, it does not mean that we have decided the question of limitation concerning challenge to earlier confirmation of the petitioner's juniors in 1977 finally. That question will have to be decided on its own merits. Rule is made returnable in the second week of December, 1989."

Thus, while admitting this petition, this Court

has refused the interim relief and has also kept open the question of limitation concerning challenge to the earlier confirmation of the juniors to the petitioners in the year 1977. That question has, therefore, to be decided on its own merits.

When the petition was taken up for final hearing today, Mr. Mehta has filed further additional affidavit in reply filed by the deponent, one Mr. S.L. Khichy, Deputy Chief Legal Adviser of the respondent Commission on 9th October 1999. Alongwith the said affidavit in reply, letter dated 16th February, 1974 has been produced and alongwith the said letter, list of the persons working on contingent basis was also produced on record and at page 47, office memorandum dated 29th July, 1967 was also produced. Mr. Mehta has also produced before this Court the notification dated 25th January, 1975 of the Commission and has relied upon item No. 4 thereof which relates to categories of posts, scales of pay, qualifications and other matters connected therewith. He has also produced relevant extract of Sec.2 which are the terms and conditions of appointment and service regulations. The word "employee" has been defined as per section 2(f) thereof. As per section 2(f) thereof, employee means a person who holds a post under the Commission and includes any such person whose services are temporarily placed at the disposal of State Government or the Central Government or any Government Industrial Undertaking. Learned advocate Mr. Clerk has also produced certain Standing Orders for contingent employees of the Commission which has been certified on 15th June, 1962 by the Certifying Officer and the Deputy Chief Labour Commissioner (Central) New Delhi, which as not been objected by Mr. Mehta, the learned advocate for the respondent Commission.

Mr. Clerk, the learned advocate appearing for the petitioner has made a specific statement before this Court that the petitioner is not pressing the prayer made in paragraph 15(aa). Paragraph 15(aa) of the prayer reads as under :

"15(aa)

directing the respondent authorities to treat the petitioner as regularized in service of the Commission on and with effect from 3.1.1975 and further directing the respondent authorities to grant all consequential benefits like salary, seniority etc. on that basis. "

Therefore, since the petitioner is not pressing the prayer clause 15(aa), and is not praying to treat the petitioner as regularized in service of the commission on and with effect from 3.1.1975 and further to grant all consequential benefits like salary, seniority etc. on that basis, now, this court is not required to examine the said question.

Now, this Court is required to examine as to what should be the age of the petitioner for superannuation, whether it should be 60 years as claimed by the petitioner or it should be 58 years as alleged by the respondents, in light of the averments made by the parties in this petition. Mr. Clerk, the learned advocate for the petitioner has contended that annexure "F" to the petition is office memorandum dated 6th April, 1981. It was passed under section 25(2) of the ONGC (Terms and Conditions of Appointment and Service) Regulations, 1975 as amended vide ONGC (Terms and Conditions of Appointment and Service) Amendment Regulations, 1978. In the said Memorandum, it has been mentioned that in terms of the provisions of the said regulations, the employee who is appointed to any of the posts mentioned in the said memorandum before 1st January, 1979 shall be retained in service till the afternoon of the last day of the month in which he attains the age of sixty years. In the said Memorandum, various posts have been mentioned from which, post at item (iii) is relevant. It is a post of Khalasi on which the petitioner was working was regularized as such which aspect is not in dispute. Certain other conditions mentioned in paragraph 4 of the said Memorandum dated 6th April, 1981 are relevant for the purpose of the present petition. It is therefore reproduced as under:

- "4. It has been decided that an existing employee i.e. one who joined the Oil and Natural Gas Commission prior to 1.1.1979 in any of the above categories of posts specified in para 1 above and who has been/is promoted to any of the different grades under the corresponding categories under the Interim Promotion Policy/Long Term Promotion Policy or against functional vacancy shall retire from the service of the Commission in the afternoon of the last day of the month in which he attains the age of sixty years. "

Mr. Clerk has submitted that the services of the petitioner from 1.6.1969 to 6.8.1980 were taken into consideration for the purpose of continuity of service, leave earned during the said period to be added on regularization, CPF Deduction from salary, counting of contingent service and amount of gratuity. In short, it is his submission that the contingent service has been treated as service for all purposes in the respondent Commission and there was no difference in respect of the nature of appointment either in contingent or regular employee working on the same post and, therefore, according to Mr. Clerk, taking into considering the effect of the provisions of Service Regulation 25(2) and the Office Memorandum dated 6.4.1981 (Annexure "F" to the petition), the petitioner is entitled to the benefit of sixty years for the age of superannuation and, therefore, the order dated 6th April, 1989 passed by the Commission retiring the petitioner from service with effect from 30.9.1989 on her attaining the age of 58 years is illegal. Mr. Clerk has pointed out that the contingent employees who were juniors to the petitioners in seniority list at sr. no. 242, 243 and 244 were given the benefit of sixty years and, therefore, the action of the respondent authority cannot be said to be just, fair and rational since it is a State Authority and, therefore, such orders passed by the respondent commission retiring the petitioner on 30.9.1989 at the age of 58 years is illegal and required to be set aside.

On the other hand, Mr. Mehta has pointed out that the petitioner is not entitled to the benefit of sixty years' age as she was regularized subsequent to 1.1.1979 and, therefore, she is not entitled to the benefit under the service regulation 25 sub clause (2) as also the definition of the word "employee" which is reproduced hereinbefore. Mr. Mehta has further submitted that there was delay in filing of the petition and he has submitted that the case of the petitioner was considered by the respondents in the year 1980 for regularization alongwith other eligible employees working in contingent establishment and at that time, her case was considered and relaxation in the age has been granted and therefor, the respondent has rightly not granted the benefit of superannuation at the age of sixty years to the petitioner. He has further pointed out that no doubt, the respondent was vested with the power to relax the age but there was difference of about eight years in the case of the petitioner and, therefore, it consumed some time for giving age relaxation and, therefore, according to the submissions of Mr. Mehta, the

petitioner is not entitled to the benefit under the service regulation and, therefore, the petition is required to be dismissed with costs.

I have considered the submissions made by the learned advocates for both the sides.

The main controversy between the parties is that at the time when the service of the petitioner was required to be regularized in the year 1975 alongwith her juniors to the petitioner whose services were considered and regularized, the case of the petitioner was also considered at that time and due to the age limit of 30 years, benefit of regularization could not be extended to the petitioner. Subsequently, one of the junior to the petitioner namely Chhotaji at Sr. No. 241 was considered and given the benefit of regularization in the year 1977 wherein the age relaxation was required of about eight months. That question is required to be examined by this Court as to why the case of the petitioner was not considered for giving regularization when the case of her juniors were considered in the year 1977 and why the relaxation of eight years was not granted to the petitioner at that point of time when such benefit was granted to her juniors by giving relaxation in age limit. The case of the petitioner was considered for regularization in the year 1980 and her services were regularized with effect from 6.8.1980. On behalf of the respondents, it has been contended that the petitioner and others were not regularized at the relevant point of time as they were very much over aged in the year 1975 and even in the year 1977. If the case was not considered by the respondent Commission in the year 1975 and 1977 as the petitioner was very much over aged, then, how she has been considered for regularization in the year 1980? The criteria to grant age relaxation was very much in existence by notification dated 28th January, 1975, item No. 4, which reads as under:

- "4. Categories of posts, scales of pay, age limit and other qualifications.- The categories of posts, the scales of pay, the age limit and other qualifications for appointment to the posts, the percentage reserved for promotion and for the direct recruitment to the posts shall be as specified in the Schedule appended to these regulations subject to any relaxation, from time to time, by the Commission. "

Thus, item -4 of the said notification provides that the respondent Commission has power and authority to grant relaxation from time to time and there was no ban or prohibition to grant such relaxation. The respondents have filed three affidavits in reply but have not pointed out any facts and have not made any averments in their replies as to why the case of the petitioner was not considered in the year 1975 and 1977 for regularization when the cases of the persons junior to her were considered. The sole explanation is that the petitioner has crossed the upper age limit and, therefore, her case was not considered but it is a fact that in the year 1980 also when the case of the petitioner was considered, she was over aged and age relaxation was granted to her while regularizing her services. The respondents have not given any explanation in their replies as to why the age relaxation was not given in the year 1975 and 1977 for regularizing her services alongwith her juniors when the power to grant the relaxation in age was very much in existence in view of the said notification. In view of these facts, the petitioner is entitled to the benefits of the office memorandum dated 6th April, 1981.

Another aspect is required to be considered and kept in mind is the office memorandum dated 29th July, 1967, page 47 annexure II. Said memorandum provides for relaxation in the age limit upto 30 years for non technical staff. It is not the case of the respondent Commission that there was no power to grant the age relaxation beyond the age of thirty years. Otherwise, the respondent would not have granted the age relaxation which it has granted in the year 1980. Therefore, it is certain that the power was in existence to grant the age relaxation but the same was not exercised in the year 1975 and 1977 when the cases of employees junior to the petitioner were considered and eight months' relaxation was granted to Shri Chhotaji Varsanji at Sr. No. 241. There is no explanation for non exercise of the power to grant relaxation in the year 1975 and 1977 in favour of the petitioner. So, the fact remains that such power to grant age relaxation was exercised in favour of the person junior to the petitioner while ignoring the case of the petitioner, though senior to him, in the year 1977 which is, according to my view, violative of Article 14 of the Constitution of India.

Apart from these facts, the Standing Orders which were produced by Mr. Clerk on record provide for classification of workmen of contingent employees of the Commission. They were classified in two categories namely temporary and casual. As per the said

classification, a workman who has been on the rolls of the Commission and has put in not less than 180 days of attendance in any period of 12 consecutive months shall be a temporary workman provided a temporary workman who has put in not less than 240 days of attendance in any period of 12 consecutive months and who possesses the minimum qualifications prescribed by the Commission may be considered for conversion as regular employee. It further provides that a workman who is neither temporary nor regular shall be considered as casual workman. As per the above Standing Orders, the petitioner has completed 180 days within the period of 12 consecutive months and become temporary workman and thereafter, has also completed 240 days of attendance within the period of 12 consecutive months and also possessed the minimum qualification and, therefore, she was converted as a regular employee. It is pertinent to note that in the said Standing Order, the age criteria is not mentioned at all. The only minimum qualification to the post has been specified. It was not the case of the respondent commission that the petitioner was not qualified to the post of Khalasi according to the minimum qualification for the post in question. It is also required to be considered that once a person has joined and worked on the rolls of the commission, then, the question of age criteria cannot come in his way while converting such contingent workman in to the post on regular establishment. The definition of the expression "employee" given under section 2(f) is also required to be taken into consideration. As per the said definition, employee means a person who holds a post under the Commission and includes any such person whose services are temporarily placed at the disposal of a State Government or the Central Government or any Government Industrial Undertaking. The petitioner while working as contingent employee was on the muster roll of the commission and after completion of prescribed period, she has become entitled to be converted as regular employee of the commission. Therefore, according to the definition of an expression "employee" also, the petitioner who hold the post of contingent employee on the roll of commission and the commission has considered the services as contingent employee for all purposes, like continuity of service, earned leave, CPF and grant of gratuity. According to my view, once a person has joined the service of the commission, then, he is entitled to the benefit of service rules and, therefore, the petitioner is entitled to the benefits of the office memorandum dated 6th April, 1981 paragraph 4 whereof specifically provides that it has been decided that the existing employee one who joined the ONGC prior to

1.1.1979 in any of the categories mentioned therein shall retire from the service of the commission in the afternoon of the last day of the month in which he attains the age of sixty years. Annexure I page 41 produced by the respondent commission in respect of regularization of contingent employees is also required to be considered. In the said letter dated 16th February, 1974, annexure I page 41, criteria has been laid down that the workman shall have to produce the relevant documents of date of birth, qualification, experience, whether SC/ST, registration card of employment exchange etc. In the said letter, criteria for minimum age or the maximum age is not mentioned which is required to be examined by the selection committee. The criteria which has been laid down for direct recruitment to the posts and fulfillment of conditions as prescribed in Headquarters Office Memo.No. 103 (98)/67 dated 29.7.1967. According to my view, this is not a direct recruitment but mere conversion of contingent employee to the regular post after completion of working days prescribed under the regulation i.e. 180 days within 12 calendar months for becoming temporary employee and thereafter 240 days continuous service as temporary employee within 12 calendar months for being converted as regular employee of the respondent commission and, therefore, in the case of the petitioner, the age criteria which has been taken into account and due to which the regularization has been delayed to some extent is, according to my view, not correct and the petitioner is entitled to be considered according to the provisions of the Standing Orders as soon as she becomes eligible for consideration as a regular employee when she is satisfying the conditions mentioned in the Standing Orders. Once the employee has joined the service and it was allowed by the respondent Commission while considering age, qualifications and other factors, then, subsequently while converting such employee as regular employee, age criteria and other qualification may not have to be strictly followed and if there is any difficulty in respect of experience and age criteria, then only, the respondent commission is under an obligation to relax the same while implementing the provisions of the Standing Orders if the employee is satisfying the conditions mentioned in the Standing Orders to convert from temporary employee to the regular employee.

After considering all these aspects of the matter, according to my view, the stand taken by the respondent that the petitioner is not entitled to the benefit of age of superannuation of 60 years according to the office memorandum dated 6th April, 1981 and

considering the provisions of regulation 25(2) of the ONGC Regulation is not correct and well founded. In pursuance to the relevant provisions of Service Regulation 25(2) quoted hereinabove, the respondent Commission has issued the notification dated 6th February, 1979 which reads as under:

"(Published in the Gazette of India, Part III
Section 4 dated ..th February, 1979)

OIL & NATURAL GAS COMMISSION

Dehra Dun the 6th February, 1979.

No.17(11)/78 Reg.- In exercise of the powers conferred by section 32 of the Oil & Natural Gas Commission Act, 1959 (43 of 1959), the Oil and Natural Gas Commission, with the previous approval of the Central Government, hereby makes the following regulations further to amend the Oil and Natural Gas Commission (Terms and Conditions of Appointment and Service) Regulations, 1975, namely:

1. (1) These regulations may be called the Oil and Natural Gas Commission (Terms and Conditions of Appointment and Service) Amendment Regulations, 1978.

(2) They shall come into force with effect from January 1, 1979.

2. For sub regulation (2) of regulation 25 of the Oil and Natural Gas Commission (Terms and Conditions of Appointment and Service) Regulations, 1975, the following shall be substituted namely:-

'(2) The employees belonging to the following categories of posts shall be retained in service till the afternoon of the last day of the month in which they attain the age of sixty years:-

(i) Attendant.

(i) Guard.

- (iii)Khalasi
- (iv) Sanitary Cleaner.
- (v) Mali.
- (vi) Cleaner.
- (vii)Guest House Attendant.
- (viii)Helper.
- (ix) Deck Hand Atendant/Tendol
- (x) Jamadar
- (xi) Daftry
- (xii) Head Mali
- (xiii) Head Sanitary Cleaner.
- (xiv) Technical Attendant.
- (xv) Hospital Attendant.

Provided that nothing in this sub clause shall
apply to an employee who is appointed to any of
these posts on or after the 1st day of January,
1979."

After taking into account all these aspects
namely service regulation 25(2) of the Regulations,
Notification dated 6th February, 1979 and the office
memorandum dated 6th April, 1981, definition of the
expression 'employee' as also the provisions of the
Standing Orders, I am of the opinion that the respondent
Commission has denied the the benefit to which the
petitioner was legally entitled in not considering her
case alongwith her juniors for regularization in the post
of Khalasi firstly in the year 1975 and then in the year
1977 and also in not granting the age relaxation at that
point of time. According to my view, it amounts to
discrimination amongst equal in equal circumstances since
one junior to the petitioner who was at Sr. 241 and yet
his case was considered for regularization and he was
granted age relaxation of about eight months while the
petitioner, senior to said employee was not considered
for regularization by saying that she was over aged and
when age relaxation was given to said junior to her, the

petitioner too ought to have been given age relaxation at that time and her case ought to have been considered for regularization. Apart from this illegal action on the part of the respondent commission, the respondent commission has committed further illegality in not granting benefit of superannuation at the age of sixty years according to service regulation 25(2) as also the office memorandum dated 6th April, 1981 wherein it is specifically made clear that an employee who has joined service of the commission prior to 1.1.1979 is entitled to be superannuated at the age of sixty years, in respect of the post of Khalasi. It is not disputed by the respondent Commission that the petitioner was appointed on the post of Khalasi as contingent employee initially on 1.6.1969. According to my view, the petitioner is entitled to the benefit of service regulation 25(2), notification dated 6.2.1979 and the office memorandum dated 6.4.1981 to retire at the age of sixty years and, therefore, the respondent commission has committed illegality and has acted in arbitrary and capricious manner in retiring the petitioner at the age of fifty eight years on 30.9.1989 and the said action of the respondent commission in retiring the petitioner on 30.9.1989 is required to be set aside. Thus, the order dated 1.9.1989 annexure "F" is required to be quashed and set aside.

In view of the passage of time, now, the relief as prayed for, to continue the petitioner in service till she reaches the age of sixty years cannot be granted though the order of her retirement superannuating her at the age of 58 years is liable to be quashed and set aside. In the circumstances, while quashing and setting aside the impugned order of retirement of the petitioner superannuating her at the age of fifty eight years, the respondents are required to be directed to treat her to have continued in service till 30.9.1991 and as a consequence thereof, to pay her all benefits accordingly.

Accordingly, this petition is partly allowed. The impugned order dated 1.9.1989 annexure "F" superannuating the petitioner at the age of 58 years is quashed and set aside. The prayers made in paragraph 15 (aa) of the petition shall stand rejected as not pressed by the petitioner. The respondent Commission is directed to treat the petitioner to have continued in service upto 60 years and to have superannuated at the age of 60 years, on 30.9.1991 and to pay all consequential benefits for the said period of two years like salary, allowances etc. as if the petitioner was continued in service upto the age of sixty years i.e. upto 30.9.1991 by

considering her to be on duty on that footing. Rule is made absolute to the above extent with no order as to costs.

Since the petitioner is an illiterate lady who has served with the respondent as Class IV employee, in the larger interest of justice, the respondent Commission is directed to pay all benefits pursuant to the aforesaid directions like wages, allowances, etc. and the annual increments which she would have earned during the said period, including the retirement benefits within the period of three months from the date of receiving the writ of this Court.

11.10.1999. (H.K.Rathod,J.)

Vyas